

derived from employment in State X, \$5,000 derived from employment in State Y, \$15,000 derived from employment in State Z, and \$1,000 in interest income from United States savings bonds. In addition, he received net tax-exempt income in the amount of \$2,000. For the taxable year, he incurs liabilities of \$200 for the State Y nonresident income tax, and \$1,400 for the State Z nonresident income tax. State X, which has in effect a State agreement for the taxable year, imposes a resident tax against which credits are allowed for the nonresident taxes imposed by States Y and Z. Without taking any such credits into account, however, the amount of A's liability for such resident tax would be \$1,500. A properly reports his nonresident income tax liabilities to States Y and Z at the same time that he files his return with respect to the State X tax, and he substantiates on such return his liabilities to States Y and Z.

(ii) The amount of A's income subject to tax in State X is \$25,000 (his adjusted gross income of \$24,000, minus the United States savings bond income of \$1,000, plus the net tax-exempt income of \$2,000). The amount of the credit allowable against the State X resident tax for the amount of A's liability with respect to the State Y nonresident tax is calculated as follows: The maximum amount of credit is the actual amount of his liability to Y, or \$200. Under subparagraph (2) of this paragraph, the amount of the credit is limited to \$300 ($\$1,500 \times \$5,000/\$25,000$). Thus, such limit has no effect, and the full \$200 is allowable as a credit against A's liability for the resident tax of State X. The amount of the credit allowable against the State Z resident tax for the amount of A's liability with respect to the State Z nonresident tax is calculated as follows: The maximum amount of the credit is the actual amount of his liability to Z, or \$1,400. Under subparagraph (2) of this paragraph, the amount of the credit is limited to \$900 ($\$1,500 \times \$15,000/\$25,000$). Thus, such limit has the effect of reducing to \$900 the amount of the credit allowable for tax of State Z against A's liability for the resident tax of State X.

Example 2. (i) B, a calendar-year, cash-basis taxpayer, is a resident of State X employed in State Y through March 14, 1977. On March 15, 1977, B becomes a resident of State Z and remains a resident of such State through the remainder of 1977. For 1977, the amount of B's adjusted gross income for Federal income tax purposes is \$20,000, consisting of \$6,000 derived from employment in State Y which B held during the period of his residence in State X, \$12,000 derived from employment in State Z which B held during the period of his residence in State Z, and \$2,000 in interest income from various bank accounts. During 1977, B has no interest income from United States obligations, and no tax-exempt income. For 1977, B incurs a liability of \$200 to

State Y on account of its nonresident income tax imposed with respect to his \$6,000 of income derived from sources within that State. State Z, which has in effect a State agreement for 1977, imposes a resident income tax on B which, if B had been a resident of State Z for all 1977, would amount to \$1,200 prior to the allowance of any credits under this paragraph. However, by reason of paragraph (e)(1) of § 301.6362-6, B's liability for the resident tax of State Z, before taking into account credits allowed under this paragraph, is reduced to \$960 ($\$1,200 \times \frac{292}{365}$, or $\frac{4}{5}$). Furthermore, State Z allows a credit for the nonresident tax imposed by State Y.

(ii) The amount of the credit allowable against the State Z resident tax for the amount of B's liability with respect to the State Y nonresident tax is calculated as follows: The maximum amount of the credit is the amount of his actual liability to State Y, or \$200. Under subparagraph (2) of this paragraph, the amount of the credit is limited to \$288 ($\$960 \times \$6,000/\$20,000$). Thus, such limit has no effect, and the full \$200 is allowable as a credit for tax of State Y against B's liability for the resident tax of State Z.

[T.D. 7577, 43 FR 59367, Dec. 20, 1978]

§ 301.6362-5 Qualified nonresident tax.

(a) *In general.* A tax meets the requirements of section 6362(d) and this section only if:

(1) The tax is imposed by a State which simultaneously imposes a resident tax meeting the requirements of section 6362(b) and § 301.6362-2 or of section 6362(c) and § 301.6362-3;

(2) The tax is required to be computed in accordance with either the method prescribed in paragraph (b) of this section or another method of which the Secretary or his delegate approves upon submission by the State of the laws pertaining to the tax;

(3) The tax is imposed only on the wage and other business income derived from sources within such State (as defined in paragraph (d) of this section), of all individuals each of whom derives 25 percent or more of his aggregate wage and other business income for the taxable year from sources within such State while he is neither (i) a resident of such State within the meaning of section 6362(e) and § 301.6362-6, nor (ii) exempt from liability for the tax by reason of a reciprocal agreement between such State and the State of which he is a resident within the meaning of those provisions;

(4) The amount of the tax imposed with respect to any individual does not exceed the amount of tax for which such individual would be liable under the qualified resident tax imposed by such State if he were a resident of the State for the period during which he earned wage or other business income from sources within the State, and if his taxable income for such period were an amount equal to the sum of the zero bracket amount (within the meaning of section 63(d) and determined as if he had been a resident of the State for such period) and the excess of:

(i) The amount of his wage and other business income derived from sources within the State, over

(ii) That portion of the sum of the zero bracket amount and the nonbusiness deductions (*i.e.*, all deductions from adjusted gross income allowable in computing taxable income) taken into account for purposes of the State's qualified resident tax which bears the same ratio to such sum as the amount described in subdivision (i) of this subparagraph bears to his total adjusted gross income for the year; and

(5) For purposes of the tax, wage or other business income is considered as being the income of the individual whose income it is for purposes of section 61.

(b) *Approved method of computing liability for qualified nonresident tax.* A tax satisfies the requirement of paragraph (a)(2) of this section if the amount of the tax is computed either as a percentage of the excess of the amount described in paragraph (a)(4)(i) of this section over the amount described in paragraph (a)(4)(ii) of this section, or by application of progressive rates to such excess.

(c) *Definition of wage and other business income.* For purposes of section 6362(d) and this section, the term "wage and other business income" means the following types of income:

(1) Wages, as defined in section 3401(a) and the regulations thereunder, but for these purposes:

(i) The amount of wages shall exclude amounts which are treated as wages under section 3402 (o) or (p) (relating to supplemental unemployment compensation benefits, annuity payments, and voluntary withholding agree-

ments), and amounts which are treated as disability payments to the extent that they are excluded from gross income for Federal income tax purposes, pursuant to section 105(d), and

(ii) The amount of wages shall be reduced by those expenses which are directly related to the earning of such wages and with respect to which deductions are properly claimed from gross income in computing adjusted gross income;

(2) Net earnings from self-employment, as defined in section 1402(a); and

(3) The distributive share of income of any trade or business carried on by a trust, estate, or electing small business corporation (as defined in section 1371(a) and the regulations thereunder), to the extent that such share:

(i) Is includible in the gross income of the taxpayer for the taxable year, and

(ii) Would constitute net earnings from self-employment if the trade or business were carried on by a partnership.

For purposes of this subparagraph, "distributive share" includes the income of a trust or estate which is taxable to the taxpayer as a beneficiary under applicable Federal income tax rules, and the undistributed taxable income of an electing small business corporation which is taxable to the taxpayer as a shareholder under section 1373.

(d) *Income derived from sources within a State—(1) Income attributable primarily to services.* Except as otherwise provided by Federal statute (see paragraphs (h), (i), and (j) of § 301.6362-7), wage income and other business income (net earnings from self-employment or distributive shares) which is attributable more to services performed by the taxpayer than to a capital investment of the taxpayer shall be considered to have been derived from sources within a State only if the services of the taxpayer which give rise to the income are performed in such State. If for a taxable year only a portion of the taxpayer's services giving rise to the income from one employment, trade, or business is performed within a State, then it shall be presumed that the amount of income from such employment, trade, or business

which is derived from sources within that State equals that portion of the total income derived from such employment, trade, or business for the year which the amount of time spent by the taxpayer for such year performing services with respect to that employment, trade, or business in that State bears to the aggregate amount of time spent by the taxpayer for such year performing all of such services. However, the presumption stated in the preceding sentence may be rebutted in the event that the taxpayer proves, by use of detailed records, that the correct allocation of his income is otherwise.

(2) *Income attributable primarily to investment.* Except as otherwise provided by Federal statute (see paragraph (j) of § 301.6362-7), business income (net earnings from self-employment or distributive shares) which is attributable more to a capital investment of the taxpayer than to services performed by the taxpayer shall be considered to have been derived from sources within the State, if any, in which the significant activities of the trade or business are conducted. If for the taxable year only a portion of the significant activities conducted with respect to one trade or business is conducted within a certain State, then the portion of the taxpayer's total income for the year from such trade or business which is considered to be derived from sources within that State shall be computed as follows:

(i) *Allocation by records.* The portion of the taxpayer's total income from the trade or business which is considered to be derived from sources within the State shall be the portion which is allocable to such sources according to the records of the taxpayer or of the partnership, trust, estate, or electing small business corporation from which his income is derived, provided that the taxpayer establishes to the satisfaction of the district director, when requested to do so, that those records fairly and equitably reflect the income which is allocable to sources within the State. An allocation made pursuant to this subdivision shall be based on the location of the significant activities of the trade or business, and not on the location at which the taxpayer's personal services are performed.

(ii) *Allocation by formula.* If the taxpayer (or the trade or business) does not keep records meeting the requirements of subdivision (i) of this subparagraph, or if the taxpayer fails to meet the burden of proof set forth therein, then the amount of the taxpayer's income from the trade or business which is considered to be derived from sources within the State shall be determined by multiplying the total of his income (as defined in paragraphs (c) (2) and (3) of this section) from the trade or business for the taxable year by the percentage which is the average of these three percentages:

(A) *Property percentage.* The percentage computed by dividing the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with the taxpayer's trade or business and located within the State, by the average of the value, at the beginning and end of the taxable year, of all such property located both within and without the State. For this purpose, real property shall include real property rented to the taxpayer in connection with the trade or business, or rented to the trade or business.

(B) *Payroll percentage.* The percentage computed by dividing the total wages, salaries, and other compensation for personal services which is paid or incurred during the taxable year to employees in connection with the taxpayer's trade or business, and which would be treated as derived by such employees from sources within the State pursuant to subparagraph (1) of this paragraph (d), by the total of all such wages, salaries, and other compensation for personal services which is so paid or incurred without regard to whether such payments would be treated as derived by the employees from sources within the State. For purposes of this subdivision (ii), no amount paid as deferred compensation pursuant to a retirement plan to a former employee shall be taken into consideration.

(C) *Gross income percentage.* The percentage computed by dividing the gross sales or charges for services performed by or through an agency located within the State by the total of all gross sales or charges for services performed both within and without the State. The

sales or charges to be allocated to the State shall include all sales which are negotiated, and charges which are for services performed, by an employee, agent, agency, or independent contractor chiefly situated at, or working principally out of an office located within, the State.

(3) *Income attributable to real estate investment.* Notwithstanding subparagraph (2) of this paragraph (d), income and deductions from the rental of real property, and gain and loss from the sale, exchange, or other disposition of real property, shall not be subject to allocation under subparagraph (2), but shall be considered as entirely derived from sources located within the State in which such property is located.

(4) *Treatment of losses.* A loss attributable to the taxpayer's employment, or to his conduct of, participation in, or investment in a trade or business, shall be allocated in the same manner as the income attributable to such employment or trade or business would be allocated pursuant to this paragraph.

(5) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A, an employee who earns \$10,000 in wage income attributable to services, and who has no other wage or other business income, spends 60 percent of his working time performing services for his employer in State X, 30 percent in State Y, and 10 percent in State Z. In the absence of the requisite proof to the contrary, A's wage income is considered to have been derived 60 percent from sources located within State X, 30 percent within State Y, and 10 percent within State Z. Assuming that A is a nonresident with respect to all three States, and that they all impose qualified nonresident taxes, then the qualified nonresident tax of State X is imposed on \$6,000, the qualified nonresident tax of State Y is imposed on \$3,000, and the qualified nonresident tax of State Z is not imposed on any of the income because A did not derive at least 25 percent of his wage and other business income from sources located within State Z.

Example 2. B, who earns no wage income but who has a total of \$10,000 of other business income for the taxable year, all of which is net income from self-employment attributable primarily to services, spends 45 percent of his working time performing services in State X, 30 percent in State Y, and 25 percent in State Z. However, the rates that B is able to charge for his services and the business expenses which he incurs vary in

the different States, and he is able to prove by detailed records that his net income from self-employment was in fact derived 50 percent from sources located within State X, 35 percent from sources located within State Y, and 15 percent from sources located within State Z. Assuming that B is a nonresident with respect to all three States, and that they all impose qualified nonresident taxes, then the qualified nonresident tax of State X is imposed on \$5,000, the qualified nonresident tax of State Y is imposed on \$3,500, and the qualified nonresident tax of State Z is not imposed on any of the income because B did not derive at least 25 percent of his wage and other business income from sources located within State Z.

Example 3. C is a partner in a profitable business concern, in which he has a substantial capital investment. His net earnings from self-employment attributable to his partnership interest are \$75,000 for the taxable year. The fair market value of the services which C performs for the partnership during the taxable year is \$30,000. C's income is therefore attributable primarily to his capital investment. The partnership business is carried on partially within and partially without State X. Neither C nor the partnership maintains records from which the portion of C's \$75,000 income which is considered to be derived from sources within State X can be satisfactorily proven. As determined under subparagraph (2) of this paragraph, the partnership's "property percentage" in State X is 70, its "payroll percentage" therein is 60, and its "gross income percentage" therein is 56. The amount of C's partnership income considered to be derived from sources within State X is \$46,500 (\$75,000×62 percent). This result would obtain even if C's services for the partnership are performed entirely within State X.

Example 4. Assume the same facts as in (3), except that the records of the partnership of which C is a member indicate that the net profits of the partnership are derived 40 percent from business activities conducted in State X, and 60 percent from business activities conducted in State Y. C is requested to prove that those records fairly and equitably reflect the income which is allocable to sources within State X. The documentary evidence which he adduces in support of the allocation made by the records shows how such allocation results from a careful step-by-step tracing of the profitability of each phase and aspect of the partnership's operations, and shows the State in which each such phase and aspect of the operations is conducted. C's proof is satisfactory to show that the percentage allocation, and the amount of his partnership income considered to be derived from sources within State X is \$30,000, or \$75,000 multiplied by 40 percent. This result would obtain even if B's services

§ 301.6362-6

26 CFR Ch. I (4-1-04 Edition)

for the partnership are performed entirely within State X.

[T.D. 7577, 43 FR 59367, Dec. 20, 1978]

§ 301.6362-6 Requirements relating to residence.

(a) *In general.* A tax imposed by a State meets the requirements of section 6362(e) and this section if in effect it provides that:

(1) The State of residence of an individual, estate, or trust is determined according to paragraph (1), (2), or (3) respectively, of section 6362(e), and according to paragraph (b), (c), or (d), respectively, of this section.

(2) The liability for a resident tax imposed by such State upon an individual or trust which changes residence to another State in the taxable year is determined according to section 6362(e)(4) and paragraph (e) of this section.

(3) The rules relating to current collection of tax apply as provided in section 6362(e)(5) and paragraph (f) of this section.

(b) *Residence of an individual*—(1) *In general.* Except as otherwise provided in subparagraph (5) of this paragraph (b), an individual is treated as a resident of a State with respect to a taxable year only if:

(i) His principal place of residence (as defined in subparagraph (2) of this paragraph (b)) is within such State for a period of at least 135 consecutive days, at least 30 days of which are in such taxable year; or

(ii) In the case of a citizen or resident of the United States who is not a resident of any State (determined as provided in subdivision (i) of this subparagraph) with respect to such taxable year, his domicile (as defined in subparagraph (3) of this paragraph (b)) is in such State for at least 30 days during such taxable year.

With respect to an individual who is a resident (determined as provided in subdivision (i) of this subparagraph) of more than one State during a taxable year, see paragraph (e) of this section.

(2) *Principal place of residence*—(i) *Definition.* For purposes of subparagraph (1)(i) of this paragraph (b), and paragraph (d)(4) of this section, the term “principal place of residence” shall mean the place which is an individual’s primary home. An individual’s tem-

porary absence from his primary home shall not effect a change with respect thereto. On the other hand, if an individual moves to another State, other than as a mere transient or sojourner, he shall be treated as having changed the location of his primary home.

(ii) *Examples.* The application of this subparagraph may be illustrated by the following examples:

Example 1. A has a city home and a country home. He resides in the city home for 7 months of the year and uses the address of that home as his legal residence for purposes of driver’s license, automobile registration, and voter registration. He resides in the country home 5 months of the year. His city home is considered his principal place of residence.

Example 2. During the taxable year, B, a construction worker, is employed at several different locations in different States. The duration of each job on which he is employed ranges from a few weeks to several months, and he knows when he accepts a job what its approximate duration will be. He owns a house in State X which he uses as his legal residence for purposes of driver’s license, automobile registration, and voter registration. In addition, his family lives there during the entire year, and B lives there during periods between jobs. However, the duration of the jobs and the distance between the job-sites and his house require him to live in the localities of the respective job-sites during the period of his employment, although occasionally he returns to his house in State X on weekends. B’s house in State X is his principal place of residence during all of the taxable year.

Example 3. C, a dependent of his parents who are residents of State X, is a full-time student in a 4-year degree program at a college in State Y. During the 9-month academic year, C lives on the college campus, but he returns to his parents’ home in State X for the summer recess. C gives the State Y as his residence for purposes of his driver’s license and voter registration, but lists the address of his parents’ home in State X as his “permanent address” on the records of the college which he attends. Although C’s domicile remains at his parents’ home in State X, his presence in State Y cannot be regarded as that of a mere transient or sojourner; accordingly, C’s principal place of residence is in State Y for that portion of the taxable year during which he attends college.

Example 4. D loses his job in State X, where he lived and worked for many years. After a series of unsuccessful attempts to find other employment in State X, he accepts a job in State Y. D gives up his apartment in State X and moves to State Y upon commencing his